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Acting for friends or family is dangerous, but discounts and free work can be a recipe for disaster

What are the problems with acting for free?

Despite the fact that it is usually done with the best of intentions on both sides, acting for friends and family can be far more trouble than it is worth (for a thorough discussion on this issue, see [Acting for friends and family](#)). Complicate matters by doing so for free or at a substantial discount, however, and the potential to cross ethical boundaries becomes acute.

The very fact of a familial or friendly relationship invites the suggestion that a different level of diligence will be brought to bear by the practitioner - after all, a friend or relative wouldn't refer you to the Legal Services Commission ('LSC') or sue you, would they? If, in addition to that factor, you add that the matter is being done for non-commercial rates, the accusation that a solicitor had not put forward their best effort is easily raised in the event of an unwelcome outcome; failing to deliver services competently and diligently is a breach of a fundamental duty¹ and for the allegation to even be made can be very damaging to a career.

In addition, when services are offered for free it is easy for practitioners to prioritise other work by virtue of the fact that it is profitable, rather than on the basis of what should - in accordance with proper and diligent performance - be handled first; the fact that work is being done for free is not an acceptable excuse for missing a deadline. Clients, courts and the LSC will expect competent and diligent work from a solicitor regardless of price.

It is also likely that a solicitor's employers would not be amenable to time and resources being spent on free work for friends. This would be regarded as quite different from pro bono work, which is usually done through a specific programme or in the solicitor's own time through an established organisation, and is vital in ensuring access to justice for the vulnerable in our society.

Further, all experienced solicitors know that even the simplest of matters can proceed in unpredictable and costly ways, and it is for that reason that such possibilities are covered in costs agreements, and that requirements for ongoing costs disclosure are imposed by the *Legal Profession Act 2007* (Qld) ('the Act'). Agreeing to work for free on a matter which spirals out of control can be very costly for the solicitor involved, and again invite criticisms in relation to diligence.

In light of this, it is possible that in many circumstances acting for free for friends or family might of itself be a breach of a fundamental duty, in that a solicitor must always act in the best interests of a client.² Discharging that duty would at the very least require a solicitor to warn a friend who seeks their assistance of the complications involved, and of the difficulties which may arise when working for free.

How should I respond to a friend who asks if I will act for free?

- You are quite correct to say that acting for free creates an ethical dilemma for you and that you cannot do it - a firm no on this basis is the QLS Ethics Centre's strong recommendation

¹ *Australian Solicitors Conduct Rules 2012*, rule 4.1.3.

² *ibid* rule 4.1.1.

- If you do decide to act for free, you must have the permission of your employer and the work must be done through the firm, and a file opened (even if you are the Prime Minister)³
- A written retainer should be drawn up and signed, covering exactly what “will and will not be done” by the solicitor
- Keep in mind that nothing about the work being free affects the need for compliance with the *Act*, and whatever restrictions apply to your performance of legal services normally apply will also apply to free work
- Acting for family and friends creates personal conflicts (maintaining confidentiality may be difficult in a ‘family setting’), it challenges your obligation to be professionally independent (we must always bring to our client relationship a detachment so that we can be their trusted advisor). A good adage to remember - when in doubt, don’t.

Shane Budden

Ethics Solicitor

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³ Hedley Thomas, ‘Julia Gillard lost her job after law firm’s secret investigation’, *The Australian* (online), 18 August 2012 <<http://www.theaustralian.com.au/news/investigations/revealed-julia-gillard-lost-her-job-after-law-firms-secret-investigation/news-story/c59b5518bdc00c3987944bb715a4fc6d>>.